IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.887 of 2011 (O&M)
Date of decision : 14.09.2015

Shamsher Singh ...Appellant

Versus

Naveen Kumar and another ...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Ashok Giri, Advocate for appellant.

Mr. Rajeshwar Singh Thakur, Advocate for respondent No.1.

Mr. T.S. Rai, Advocate for
Mr. Sumit Batra, Advocate for respondent No.2.
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AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the concurrent findings of the fact, whereby suit for specific performance of the agreement to sell dated 26.07.2003 Ex.P1 has been partly decreed, i.e. alternative relief of earnest money of ₹1,70,000/- has been ordered to be refunded along with 6% interest.

Mr. Ashok Giri, learned counsel appearing on behalf of appellant submits that there was stipulation in the agreement to sell that vendee had to pay a sum of ₹4,65,000/- to J&K Bank out of total sale consideration of ₹6,10,000/- and the balance i.e. ₹1,45,000/- has to be paid to the vendor on or before 30.09.2003. Having not done so, the aforementioned earnest money had been forfeited. Both the Courts below have committed illegality and perversity in rendering findings on the terms and conditions of the agreement to sell and

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thus, the substantial questions of law arises.

Mr. Rajeshwar Singh Thakur, learned counsel appearing on behalf of respondent No.1 says that it was not the condition precedent to clear the bank dues for seeking registration and execution of the sale deed. Since, bank had already been impleaded as defendant No.2 in the suit, the respondent-plaintiff would have got the sale deed executed on deposit of aforementioned outstanding dues to the bank in execution of the decree.

It is a matter of record that bank had initiated the proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and taken over the possession of the land mortgaged with it, therefore, Courts below had ordered refund of the earnest money.

I have heard learned counsel for parties and appraised the paper book.

It would be apt to reproduce the relevant conditions of the agreement to sell dealing with the payment of the money/discharging the liability to the bank:-

> *"Whereas the party No.1 is a owner of one Feed Factory running under the name and style of Gopal Agro Industries Village Bhattian, constructed on land measuring about 13 biswas.*
>
> *Whereas the party No.1 with his full senses, presence of mind, without any pressure have agreed to sell his abovesaid land measuring 13 biswas alongwith construction thereupon, alongwith machinery fixture and fittings on it to party No.2 for a total sale consideration of Rs.7,80,000/- (Rupees seven lac and eighty thousand only). The party No.1 has received a sum of Rs.1,70,000/- (Rupees one lac and seventy thousand*

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only) as advance earnest money from the party No.2. As the sum of Rs.4,65,000/- is due and outstanding against the party No.1/of J&K Bank, hence the party No.2 shall make the payment of Rs.4,65,000/- out of the sale consideration of Rs.6,10,000/- to said bank and the remaining sale consideration of Rs.1,45,000/- shall be paid by party No.2 to party No.1 on or before 30 September 2003. There is litigation pending pertaining land measuring 3 biswas out of the land measuring 13 biswas upon which the abovesaid feed factory stands installed and the party No.1 shall sort out the litigation with 15 days from the date of this agreement with the said litigant otherwise the party No.2 shall have the right to sort out the litigation at his own and the amount so required for settlement of the litigation shall be deducted from the remaining sale consideration of Rs.1,45,000/- and the amount remained after deduction of the amount paid to litigant shall be paid to the party No.1 of the first part by party No.2."

On perusal of the aforementioned conditions, it is evident that balance sale consideration i.e. ₹1,45,000/- which had to be paid by respondent-plaintiff to the appellant-defendant was on or before 30.09.2003 and not ₹4,65,000/-. Date was fixed for the payment of the aforementioned amount i.e. ₹4,65,000/-. The bank had already been impleaded as respondent No.2 in the present appeal and defendant No.2 in the suit and, therefore, respondent plaintiff could have sought execution and the registration of the sale deed on payment of the outstanding dues of the bank. There is no force in the contention that, if the respondent plaintiff did not pay the amount of ₹4,65,000/- to the bank, therefore, agreement had become void/frustrated.

I do not find any illegality and perversity in the impugned judgment and decree.

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Judgment cited by learned counsel for appellant of Hon'ble Supreme Court in *V. Lakshmanan Vs. B.R. Mangagiri & ors., 1995(1) Civil Court Cases 419 (S.C.)* deals with a particular clause of the agreement i.e. forfeiture of the earnest money. This clause is always incorporated in agreement to sell in case one of the parties to the contract fails to perform its act. In the instant case, the respondent-plaintiff had appeared before Registrar on 30.11.2003 for execution and registration of the sale deed, but the appellant-defendant did not appear. Thus, the respondent-plaintiff had proved the readiness and willingness, therefore, the ratio decidendi culled out in the aforementioned judgment do not apply to the facts and circumstances of the case. The appellant-defendant cannot be permitted to forfeit the earnest money.

Keeping in view the facts and circumstances, I do not find any illegality and perversity in the impugned judgments and decrees passed by both the Courts below.

Both the Courts below have rendered findings of fact based on the appreciation of oral and documentary evidence, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, appeal is dismissed.

14.09.2015 **(AMIT RAWAL)**
pawan **JUDGE**

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